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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES ex rel SAM DeSTEFANO,

Petitioner,

vs.

JOSEPH I. WOODS, Sheriff of Cook County, Illinois,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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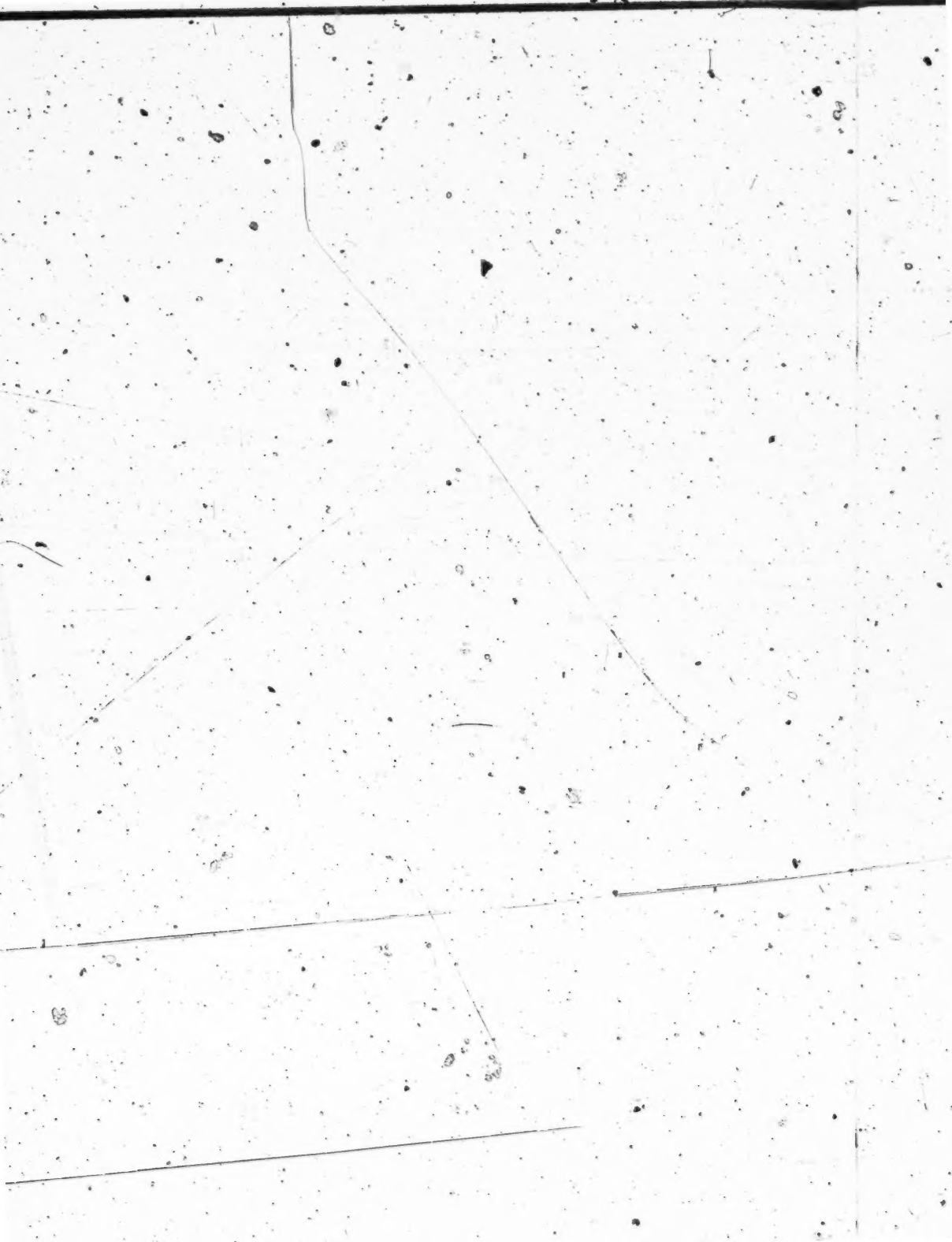

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, SAM DESTEFANO, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in the case entitled United States of America *ex rel.* Sam DeStefano, Petitioner-Appellant vs. Joseph I. Woods, Sheriff of Cook County, Illinois, Respondent-Appellee, No. 16070.

OPINIÓN AND ORDERS OF THE COURT BELOW

The decision of the United States District Court for the Northern District of Illinois, Eastern Division was entered on January 31, 1967. It is not reported but appears in the printed appendix filed, and certified by the Clerk of the United States Court of Appeals for the Seventh Circuit as a part of the record and transmitted herewith.

The oral opinion rendered by the District Court is also incorporated in the printed appendix filed, and certified as above stated. The opinion of the United States Court of Appeals for the Seventh Circuit, affirming such judgment, was filed on July 6, 1967, and is not yet reported, but is set forth in the petitioner's appendix hereto (*infra*, pages App. 1-6)*, and in the certified copy of the record.

Petition for Rehearing was denied on August 3, 1967. No opinion was rendered on the Petition for Rehearing, and the Order Denying such Petition is not reported, but is set forth in the appendix hereto (*infra*, page App. 8) and in the certified copy of the record.

STATEMENT OF JURISDICTION

The Order of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division was filed on July 6, 1967. On August 3, 1967, it was ordered that the Petition for Rehearing be denied (these orders appear in Petitioner's Appendix hereto, *infra*, pages App. 7-8). This Petition is filed within 90 days of the denial of the Petition for Rehearing in the United States Court of Appeals for the Seventh Circuit.

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* "App." refers to supplemental appendix *infra*. "A." refers to appendix filed in the Court of Appeals.

The jurisdiction of this court is invoked under 28 U.S.C., §1254(1).

QUESTIONS PRESENTED

1. Does petitioner have a constitutional right to jury trial on an Illinois criminal contempt charge resulting in three concurrent one-year sentences?

2. Does a sentence for direct criminal contempt in excess of six months imprisonment, without restriction on the trial judge as to the extent of punishment necessary or proper to the vindication of his dignity, violate the Eighth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

This cause commenced by the filing of a Petition for a Writ of Habeas Corpus on January 18, 1967, which Petition was Amended the following day. (A. 3-8) On January 23, 1967, the respondent moved to dismiss the Petition for a Writ of Habeas Corpus, as Amended, which Motion was denied on January 31, 1967. On the same January 31, 1967, the Respondent filed his Answer to the Petition for the Writ of Habeas Corpus (A. 2, 9-13).

At that time, Petitioner was in the custody of the Respondent on the Contempt convictions pursuant to a final order issued out of the Appellate Court of Illinois, First District. From the decision of the Illinois Appellate Court, 64 Ill. App. 2d 368, 212 N.E. 2d 368, the Petitioner filed a Petition for Leave to Appeal to the Illinois Supreme Court, which Petition was denied on March 22, 1966, without opinion. A Petition for Writ of Certiorari was filed in this Court within the time allowed by law and on December 12, 1966, said Writ was denied. *DeStefano* v. *Illinois*, 87 S.Ct. 594 (The Chief Justice, Mr. Justice Black and Mr. Justice Douglas were of the opinion that Certiorari should

have been granted. An application for a Writ of Habeas Corpus was made to the United States District Court for the Northern District of Illinois on December 15, 1965, which Petition was dismissed for failure to exhaust State remedies on December 28, 1965. Subsequently, on January 3, 1967, an opportunity was afforded the Supreme Court of Illinois to rule on the constitutional questions herein involved via a Petition for Leave to File an Original Petition for a Writ of Habeas Corpus, which was denied on January 11, 1967.

The Petitioner's incarceration resulted from findings of guilty of being in contempt of court, during the course of a criminal trial in which he was defending himself in the Circuit Court of Cook County—Criminal Division. On December 9, 1964, he was sentenced to one year in the Cook County Jail on each of three contempts, the sentences to be served concurrently, and additionally fined $2,000.00. When he was judged guilty of contempt, the trial court refused him bail on appeal. He served 87 days of the contempt sentence until he was ordered released on bail in the amount of $5,000.00 on order of Mr. Justice Tom Clark of this court. Thereafter he remained on bail during the appeal processes of the Illinois Courts and in this court.

Upon the Petitioner's receiving notification from his attorney of the denial of Certiorari to review the State conviction, he surrendered to the State authorities as a condition of his bond required, and served an additional 207 days until, on his application for bail pending appeal, Mr. Justice Tom Clark granted him bail pending appeal in this cause. He has thus served approximately seven months of the concurrent sentences imposed.

Prior to the imposition of the said three one-year concurrent sentences and the $2,000.00 fine, the petitioner was neither indicted, nor was he accorded jury trial, nor did he waive jury trial.

In the petition for the Writ of Habeas Corpus (A. 3-8), this Petitioner contended his incarceration and detention to be violative of the Constitution of the United States in that the summary disposition of the contempt charges resulting in three concurrent one-year sentences and a substantial fine, without indictment, is violative of the Fifth Amendment to the Constitution of the United States, requiring indictment or presentment by a Grand Jury, and, beyond the jurisdiction of the trial court in that the Petitioner's right to a jury trial insured by the Sixth Amendment to the Constitution of the United States was not complied with. It was his further contention that jury trial was a necessity where sentences for criminal contempt exceeded those allowed in convictions of petty offenses, citing this Court's decision in *Cheff* v. *Schnackenberg,* 384 U.S. 337. It was the position of the respondent that the complaints of the petitioner did not reach constitutional proportions and that this court in *Cheff* v. *Schnackenberg* intended only to exercise its supervisory power over federal courts, 384 U.S. 373 at 380. In its oral findings the trial court determined: "That the question of this right to a jury trial based on the *Cheff* case is not a constitutional right." (A. 13)

In affirming, the United States Court of Appeals for the Seventh Circuit held:

> "As we interpret *Cheff*, the court was there announcing a rule of procedure for federal courts. It was not considering any state court proceeding. Obviously the state court proceeding here involved is subject to the control of the state of Illinois and not to the federal

court as to the procedure pursued in punishing for criminal contempts such as here involved." (App. 4)

It was a further contention of the petitioner that the three concurrent sentences of one year in the County Jail and the substantial fine is excessive as to a matter of constitutional law and violative of the Eighth Amendment proscription against cruel and unusual punishment. The respondent contended that either a fine or imprisonment or both, are proper punishment in a contempt case under Illinois law, that the punishment actually levied was solely in the trial court's sound discretion and should not be overturned except in cases of gross abuse, and that the action of the petitioner clearly embarrassed the court, and disrupted and defeated the prompt and fair administration of justice, relying on the Appellate Court decision in *People* v. *DeStefano,* 64 Ill. App. 2d 368 at 383. The District Court below found that the punishment imposed was not a violation of the constitutional right against cruel and unusual penalties. (A. 13)

The Court of Appeals for the Seventh Circuit held:

"2. Furthermore, the record shows that, as a result of petitioner's repeated acts of misconduct in open court in utter disregard of the proper administration of the court's business, the court imposed three one-year sentences, but with indulgence provided that they should be served concurrently, although it in addition imposed a fine of $2,000 as to one of the charges of contempt. These facts contradict petitioner's charge that cruel and unusual punishment was imposed upon him in violation of the eighth amendment to the constitution of the United States. In fact any less punishment would be an invitation to other such persons to vie with petitioner in more flagrant ways of showing their contempt for courts of law." (App. 4-5)

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAS MISINTERPRETED THIS COURT'S DECISION IN CHEFF v. SCHNACKENBERG, 384 U.S. 373, AND ITS DECISION IN THIS CAUSE CONFLICTS WITH THAT DECISION AND WITH THE DECISION OF THE SECOND CIRCUIT IN UNITED STATES v. FERRARA, 377 F.2d 16.

In determining that this court merely announced a rule of procedure for federal courts by its decision in *Cheff* v. *Schnackenberg,* 384 U.S. 373, we submit that the Seventh Circuit has misinterpreted the true portent of that case. This court, after concluding that the sentence in Cheff of six months qualified as a "petty offense" under Title 18, U.S.C. §1, and that petty offenses historically have not entitled an accused to trial by jury, it condoned the sentence of six months imposed upon Cheff, which concurs with the outmost limits of punishment for "petty offenses" in the defining statute, (18 U.S.C. §1) and determined the sentence was prohibited neither by the Sixth Amendment to the Constitution of the United States nor Article III, Section 2, Clause 3. The court then recognized that the opinion authorizing the imprisonment of Cheff left no guide lines to act as a standard in cases involving a larger penalty, and further recognized that there was no controversy presently pending before the court to give occasion for a clear ruling in the events of lengthier penalties. It, therefore, invoked its general supervisory pow-

er over *federal* courts to assist them in pending and future cases, saying:

> "At the same time, we recognize that by limiting our opinion to those cases where a sentence not exceeding six months is imposed we leave the federal courts at sea in instances involving greater sentences. Effective administration compels us to express a view on that point. Therefore, in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived. Nothing we have said, however, restricts the power of a reviewing court, in appropriate circumstances, to revise sentences in contempt cases tried with or without juries." *Cheff* v. *Schnackenberg,* 384 U.S. 337.

But, this exercise of supervisory power as to pending and future cases in no way detracts from the constitutional issues involved in this case. This Court did not consider the questions raised in *Cheff* as regulatory nor rule making. The approach to the *Cheff* case was definitely on constitutional terms. This Court explicitly stated that it granted Cheff's Petition for Certiorari "limited to a review of the question whether, after a denial of a demand for a jury, a sentence of imprisonment of six months is constitutionally permissible under Article 3 and the Sixth Amendment." To assume the reasoning of the court below, we would have to conclude that this Court, recognizing only a constitutional question, did not resolve it on a constitutional basis.

While this Court resolved the issue in *Cheff* by denominating his six month sentence satisfactorily suits the outmost limits of petty offenses, it also clearly implied

and agreed that sentences imposed in excess of six months were constitutionally required to provide for jury trial. In summarizing Cheff's argument, the court said that he, Cheff, "would have us hold that the right to trial by jury attaches in all criminal contempts and not merely those which are outside the category of 'petty offenses'."

Thus, the main opinion in *Cheff* takes for granted that trial by jury is insured under the Constitution when the sentence exceeds the six month limitation.

The interpretation put on *Cheff* by the court below, ignores the entire tenor of this court's decision. *Cheff* revolves principally about the decision in *District of Columbia* v. *Clawans,* 300 U.S. 617, and clearly approached the question of summary punishment as a constitutional one. Illustratively, the dissent of Justices Black and Douglas adverted to and interpreted the *District of Columbia* v. *Clawans* decision as reflecting a principle that no offense which carries a substantial penalty can be "petty". In the main opinion, the court accepted a statement from the dissent in *United States* v. *Barnett,* 376 U.S. 681 at 751 that:

> "At the time of the constitution all types of 'petty' offenses punishable by trivial penalties were generally triable without a jury. This history justifies the imposition without trial by jury of no more than trivial penalties for criminal contempts."

The decision in *District of Columbia* v. *Clawans,* so heavily relied on in *Cheff,* makes it clear that the summary imposition of sentences raises a constitutional question.

> "It is settled by the decisions of this Court, which need not now be discussed in detail, that the right of trial by jury, thus secured, does not extend to every

criminal proceeding. At the time of the adoption of the Constitution there were numerous offenses, commonly described as 'petty,' which were tried summarily without a jury, by justices of the peace in England, and by police magistrates or corresponding judicial officers in the Colonies, and punished by commitment to jail, a workhouse, or a house of correction. We think, as the Court of Appeals held and respondent concedes, that apart from the prescribed penalty, the offense of which petitioner was convicted is, by its nature, of this class, and that were it not for the severity of the punishment, the offender could not, under our decisions, claim a trial by jury as of right.

* * * *

"But this Court has refused to foreclose consideration of the severity of the penalty as an element to be considered in determining whether a statutory offense, in other respects trivial and not a crime at common law, must be deemed so serious as to be comparable with common law crimes, and thus to entitle the accused to the benefit of a jury trial prescribed by the Constitution. See *Schick* v. *United States, supra* (195 U.S. 67, 68, 49 L. ed. 101, 102, 24 S. Ct. 826, 1 Ann. Cas. 585)." *District of Columbia* v. *Clawans*, 300 U.S. 617, 624-5.

We, therefore, submit that this court's decision in *Cheff* v. *Schnackenberg* was clearly the resolution of a constitutional issue and that the incarceration of this petitioner for a period in excess of the outmost limits of those that can be imposed for petty offenses offends against the Sixth Amendment to the Constitution of the United States, made applicable to states under the due process clause of the Fourth Amendment, and offends against Article 3, Section 2, Clause 3 thereof.

We also respectfully direct the court's attention to the recent decision of the Second Circuit in *United States* v. *Ferrara*, 377 F. 2d 16. That court held:

> "On the other hand, we hold that appellant is correct in his contention that his one year sentence for criminal contempt should be reduced. In Cheff v. Schnackenberg, 384 U.S. 373, 380, 86 S.Ct. 1523, 1526, 16 L.Ed. 2d 629 (1966) the Supreme Court ruled that 'sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.' Defendant did not, as the government argues, waive his right to a jury trial by pleading guilty to the contempt charge, since at the time of his plea Cheff v. Schnackenberg, the case which established his right, had not yet been decided. Indeed, the record discloses that before Ferrara pleaded guilty counsel informed him that he had a 'right to have a hearing without a jury to determine whether he was in criminal contempt.' His guilty plea cannot be regarded as an intentional relinquishment of a known right. See, e. g., Johnson v. Zerbst, 304 U.S. 458, 461, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)." *United States* v. *Ferrara*, 2 Cir., 377 F.2d 16, 18.

Thus, the Court of Appeals for the Second Circuit, resolved the question, not on the bases of procedural rules, but on the bases of *rights* established, and the rights of which that court spoke, as did this court in *Cheff*, were rights of constitutional dimension.

We therefore submit that the Seventh Circuit has decided this basic constitutional question in a way in conflict with *Cheff* and with the Second Circuit, and contrary to the mandate of the Constitution of the United States.

It seems to be established that a person in a contempt proceeding against him is entitled as a constitutional right to be represented by counsel (*In Re Germann*, S.D.N.Y.,

262 F. Supp. 707, 709). There seems to be no reason why if an accused is entitled to one constitutional right, other constitutional rights of persons accused should be denied him, since we know of no hierarchy of constitutional rights, nor any distinction in their application. Therefore, we submit in accordance with that authority, that petitioner's other rights under the Fifth and Sixth Amendments, incorporated into the due process clause of the Fourteenth Amendment, were wrongly denied him.

This court's attention is further directed to the decision in *People* v. *Bloom*, 35 Ill. 2d 255, which, while it is not expressly relied upon by the Seventh Circuit, nonetheless was a major basis relied on by the respondent herein in resisting the Petition for the Writ of Habeas Corpus.

At the session of this court of April 17, 1967, review on certiorari was granted in that case (87 S. Ct. 1346). One of the two questions to be considered by this court in that grant of certiorari is:

> "(1) Does defendant have fourteenth amendment right to jury trial on Illinois criminal contempt charge resulting in two year prison sentence?" *Bloom* v. *Illinois*, cert. grt. 87 S.Ct. 1346.

The question presented here is indistinguishable:

> "(1) Does petitioner have a constitutional right to jury trial on an Illinois contempt charge resulting in three concurrent one year sentences?" (*Supra*, p. 3)

It is submitted that the same question is presented to this court in this petition as this court agreed to review in *Bloom*, and respectfully suggest this question be considered by this Court together with *Bloom*.

II.

A LAW WHICH PERMITS IMPRISONMENT REGULATED ONLY BY THE SENSIBILITIES AND PREJUDICES OF THE VICTIM OFFENDS AGAINST THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AS CRUEL AND UNUSUAL AND IS IN CONFLICT WITH THE DECISIONS OF THIS COURT IN WEEMS v. UNITED STATES, 217 U.S. 349 AND IN DISTRICT OF COLUMBIA v. CLAWANS, 300 U.S. 617.

In a case such as the one at bar, the victim, the prosecutor, the jury and the judge are all embodied in one person. The measure of punishment is governed by the sensitivity, subjectivity, and in large part, egotism of the victim-prosecutor-jury-judge.

The sentences imposed here serve only to emphasize that objective approach, in a country nominally of laws and not of men, is effectively defeated in this type of procedure.

Ordinarily, the legislature determines the scope of permissible punishment for offenses. This is one of the main constitutional infirmities in excessive punishment in contempt citations. The victim-prosecutor-jury-judge exercises an unbridled authority to mete out punishment, which punishment depends upon nothing more than his own personality. There is no prohibition against his imposing life imprisonment, or, so far as we know, capital punishment.

Though we contend that a sentence such as that imposed in this case following mere, at most, disruption of a court room, is not suited to the gravity of the offense, the United States Court of Appeals for the Seventh Circuit disagreed (App. 4-5) but, we submit, that is the unim-

portant aspect. The want of objective standards of punishment is alien to our form of government.

> "But we may doubt whether summary trial with punishment of more than six months'-imprisonment, prescribed by some pre-Revolutionary statutes, is admissible, without concluding that a penalty of ninety days is too much. Doubt must be resolved, not subjectively by recourse of the judge to his own sympathy and emotions, but by objective standards such as may be observed in the laws and practices of the community taken as a gauge of the its social and ethical judgments." *District of Columbia* v. *Clawans*, 300 U.S. 617, 627-8.

Thus, the practice approved in the Court below of inflicting punishment, without regulation by a detached and impersonal authority, offends against the Constitutional safeguards designed to insure equality.

Further, the permissible punishment, under the present practice knows no bounds, and is, therefore, cruel within the meaning of the eighth amendment in that it is devoid of permissible limit. It is unusual in that it is not apportioned to the offense, may be inflicted without standard, and is imposed by the person offended, who would ordinarily be disqualified from adjudicating any other offense.

In *Weems* v. *United States*, 217 U.S. 349, permissible punishment, not appropriate to the offense involved, was cast down. This court held that:

> "even if the minimum penalty of *cadena temporal* had been imposed, it would have been repugnant to the Bill of Rights. In other words, the fault is in the law; . . . " (217 U.S. at 382)

CONCLUSION

Wherefore, for the foregoing reasons, Petitioners pray that a Writ of Certiorari be issued to the United States Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

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